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9231 Redbridge Court
Laurel MD 20723

MAILED

MAR 05 2012

OFFICE OF PETITIONS

In re Patent of Deanne T. Ongwela :
Patent No. 6,669,657 :
Issue Date: December 30, 2003 : Decision and Request for Information
Application No. 09/665,608 :
Filing Date: September 20, 2000 :
For: Massage and Tactile Stimulation
Device :
:

This is a decision and letter in response to a paper filed January 27, 2012, which is being treated as a petition under 37 C.F.R. § 1.183 and a petition under 37 C.F.R. § 1.378(b).

The Petition Under 37 C.F.R. § 1.183

The petition under 37 C.F.R. § 1.183 is **dismissed**.

A petition under 37 C.F.R. § 1.378(b) must include the \$700 surcharge set forth in 37 C.F.R. § 1.20(i)(1). Petitioner has not submitted the \$700 surcharge and requests waiver of the surcharge.

37 C.F.R. § 1.183 states, with emphasis added,

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section **must** be accompanied by the petition fee set forth in § 1.17(f).

The fee of \$400 set forth in 37 C.F.R. § 1.17(f) has not been submitted. Therefore, the merits of the request for waiver of the \$700 fee will not be addressed.

If Petitioner files a renewed petition under 37 C.F.R. § 1.183 and the \$400 fee, the petition may request a waiver of the rules in order to permit a refund of the \$400 petition fee.

As a courtesy, the Office notes a petition under 37 C.F.R. § 1.183 must establish the existence of an extraordinary situation. Proof a party's delay in payment of a maintenance fee was unavoidable would not, without more, establish the existence of an extraordinary situation since all petitions under 37 C.F.R. § 1.378(b) must include such proof.

The Petition Under 37 C.F.R. § 1.378(b)

Background

The patent issued December 30, 2003.

The 7.5 year maintenance fee was due between December 30, 2010, and June 30, 2011, or with a surcharge, from July 1, 2011, to December 30, 2011.

Petitioner's husband passed away during April 2011, and Petitioner closed her small business during June 2011 to take care of her 9-year old son.

During August 2011, Petitioner was aware the total fee owed at the time was \$1,305, which is the sum of the \$1,240 maintenance fee and a \$65 surcharge.

Effective September 26, 2011, the 7.5 year maintenance fee for small entities was increased to \$1,425 and the surcharge for payment during the six-month period for small entities was increased to \$75.

The maintenance fee was not timely paid and the patent expired on December 31, 2011.

During December 2011, Petitioner contacted the Office to clarify the fees owed and learned of the fees had been increased.

Petitioner states Petitioner was unable to pay the unexpected significant increase prior to receiving a paycheck on January 6, 2012.

Petitioner appears to have filed a Maintenance Fee Transmittal Form and a Credit Card Authorization Form by facsimile transmission on January 6, 2012.

The Office did not accept the fee and Petitioner subsequently learned the patent had expired.

Discussion

The required \$700 surcharge has not been submitted. Therefore, the merits of the petition under 37 C.F.R. § 1.378(b) will not be addressed at this time.

Petitioner has submitted the 7.5 year maintenance fee and an additional \$75. If Petitioner wishes for the Office to address the merits of the petition under 37 C.F.R. § 1.378(b), Petitioner must submit an additional \$625 (\$700 - \$25) within TWO MONTHS of the mailing date of this letter. Extensions of time may not be obtained. The response to this Requirement for Information

should include a cover letter entitled "Response to Request for Information." The failure to file a timely reply to the instant Request for Information will be interpreted as a desire to no longer pursue reinstatement of the patent and the Office will give no further consideration to the matter.

If Petitioner does not wish to submit the additional \$625, Petitioner may request a refund of the \$1,500 submitted January 27, 2012. A request for a refund of the \$1,810 may be sent to: Mail Stop 16, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this letter should accompany any request for refund.

If a response to the instant request and \$625 are filed, Petitioner should ensure the response includes *proof* Petitioner was unable to timely pay the fee. The current record fails to provide specific information regarding Petitioner's income, expenses, assets or liabilities.

If a response to the instant request and \$625 are filed, Petitioner should identify the nature of the card used to pay the 7.5 year maintenance fee on January 6, 2012. If the card was a credit card, Petitioner should explain why she needed to receive the January 6, 2012, prior to paying the fee with a credit card.

Petitioner may file a petition under 37 C.F.R. § 1.378(c) in response to the instant request instead of pursuing relief under 37 C.F.R. § 1.378(b) or requesting a refund of the \$1,500 filed January 27, 2012. A copy of a blank form which may be used to file such a petition is attached. A petition under 37 C.F.R. § 1.378(c) is different than a petition under 37 C.F.R. § 1.378(b) in two main respects.

- (1) (A) A petition under 37 C.F.R. § 1.378(b) must prove the entire delay in payment of a fee was unavoidable, and
- (B) A petition under 37 C.F.R. § 1.378(c) merely needs to state the delay in payment of the fee was unintentional.
- (2) (A) The surcharge for a petition under 37 C.F.R. § 1.378(b) is \$700, and
- (B) The surcharge for a petition under 37 C.F.R. § 1.378(b) is \$1,640.

Since Petitioner has already submitted \$1,500, the remainder of the fees due if a petition under 37 C.F.R. § 1.378(c) is \$1,565 (\$1,425 + \$1,640 - \$1,500).

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.¹ Document Code "PET.OP" should be used if the request is filed electronically.

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

¹ General Information concerning EFS Web can be found at <http://www.uspto.gov/patents/process/file/efs/index.jsp>.

By facsimile: (571) 273-8300
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

If Petitioner wishes to discuss the instant decision, Petitioner should feel free to contact Senior Petitions Attorney C. Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Attachments: Petition Under 37 C.F.R. § 1.378(c) Form
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